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In re Application of
Durst et al.
Application No. 09/884,656
Filed: June 20, 2001
Attorney Docket No. 1578

OFFICE OF PETITIONS
ON PETITION

This decision concerns the July 8, 2003 petition under 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned on June 26, 2002 for failure to timely file a proper response to the March 25, 2002 final Office Action. A petition asserting timely response to that Office action, filed on June 9, 2003 along with a Notice of Appeal, was dismissed on June 20, 2003, in that, the application was properly held abandoned since Applicants' timely reply was non-responsive to the Office action.

The instant petition, accompanied by a Request for Continued Examination (RCE), instructs the PTO to consider the arguments in the June 9, 2003 Notice of Appeal as the "submission" required by 37 CFR 1.114;¹ encloses the \$375 RCE filing fee and the \$650 petition fee, both in small entity amounts;² and includes a statement that the entire delay in filing a proper reply to the March 25, 2002 final Office Action from its due date until the filing of a grantable §1.137(b) petition was unintentional. The petition is thus granted. The application is hereby revived for establishing continuity with the RCE.

With the filing of the instant RCE, and given that the June 9, 2003 Notice of Appeal was never entered, the \$160 filing fee for the Notice of Appeal has been refunded.

The application file is being returned to Technology Center 1700 for further examination.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.

RC Tang
Petitions Attorney
Office of Petitions

¹ The RCE also instructs considering the "amendment/reply under 37 CFR 1.116 previously filed on 6/4/03" as part of the §1.114 submission. However, no such amendment or reply was filed with the 6/9/03 petition.

² The \$650 fee consists of a \$55 credit from the 6/9/03 petition, and a \$595 payment enclosed with the instant petition.